IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/03/2004

CORAM

THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

SECOND APPEAL NO.1038 OF 1993

Lakshmi .. Appellant

-Vs-

M. Muthiah .. Respondent

This second appeal is preferred under Section 100 of CPC against the judgment and decree made in AS No.81 of 1990 on the file of the learned Subordinate Judge, Srivilliputtur dated 31.3.1992 in setting aside the decree and judgment made in OS No.461 1986 on the file of the learned Additional District Munsif, Srivilliputtur dated 17.1.1990.

!For Appellant : Mr.V.P.Venket

^For Respondent : Mr.S.Krishnasamy

:JUDGMENT

Aggrieved over the refusal of the relief of maintenance by the first appellate court, though agreed by the trial court, the plaintiff has brought forth this second appeal.

2. The following facts are noticed in the pleadings of the parties:

The plaintiff is the lawfully wedded wife of the defendant. Their marriage took place on 21.10.1962 according to the Hindu Caste, Customs and rites. The plaintiff gave birth to a female child, by name, Petchiammal. The defendant brought the concubin d has been living in the house. Due to the association of the defendant with concubine Veerammal, the defendant ill-treated and beat the plaintiff to the extent of endangering her life. The plaintiff was bearing the cruel treatment patiently. The plainti ff, due to her suffering and starving for a period of 15 years, during which period the defendant did not make any arrangement for her maintenance, approached the defendant, but the defendant was giving false excuses and promises all along. The marriage of Petchiammal was also done three years ago to the institution of this proceedings. The plaintiff has no means to support her and is not able to earn her bread, whereas the defendant was a rich man, having got Rs.40000/-, and apart from that he has got an annual income of Rs.20000/- from the plaint scheduled landed property, and thus, there arose a necessity for filing the suit for the recovery of maintenance of Rs.4200/- as past maintenance and for maintenance at the rate of Rs.350/- per month towards future maintenance.

3. The suit was resisted by the defendant stating that it is true that the marriage of the parties took place and the plaintiff gave birth to a female child; that the allegation of cruel treatment was utter false; that there was a customary divorce he presence of the panchayat on 14.7.1974; that at the time of panchayat, the "parisam" amount of Rs.201/- was also given by the defendant to the plaintiff, and thus, the marriage tie between the parties came to an end; that from the time of divorce, the plaintiff has been living with her parents; that it is false to state that the defendant has got Rs.40000/-, and apart from that he is having lot of movable and immovable properties; that after the divorce, the defendant was maintaining the daughter Pet chiammal and she has also filed a suit against the defendant and his mother in OS No.424 of 1986 containing false allegations and the same is also pending, and thus, the plaintiff's case for maintenance was false, and hence, the defendant was not liable to pay any maintenance.

4. Necessary issues were framed by the trial court, which tried the suit and decreed the same granting a decree of Rs.3000/- towards past maintenance and ordered maintenance at the rate of Rs.250/- towards future maintenance. Aggrieved, the defendan ok it on appeal. The first appellate court reversed the judgment of the trial court and dismissed the suit. Hence, this second appeal has been brought forth by the aggrieved wife.

5. At the time of admission, the following substantial questions of law were formulated by this Court for consideration:

1) Whether the lower appellate court has erred in setting aside the decree for maintenance having found the relationship of the respondent and the appellant as husband and wife?

2) Whether the judgment of the lower appellate court is vitiated for the failure to comply with the mandatory requirement of Order 41 Rule 31 C.P.C.?

6. Heard the learned counsel for the appellant and also the respondent on those contentions.

7. On hearing the rival submissions and scrutiny of the materials available, this Court is of the view that the judgment of the trial court has got to be restored. It was a suit for recovery of past maintenance and also for an order of future mainte e alleging that the defendant married the plaintiff on 21.10.1962 as per the Hindu Caste, Customs and rites and they had a female child, by name, Petchiammal. The allegation as to the factum of marriage and the birth of female child is well admitted by t he defendant in his written statement. What was contended by the defendant before the courts below to deny the claim of maintenance was that there was a customary divorce between the parties that took place on 14.7.1974 in the presence of the panchayatda rs. In order to prove the said customary divorce, the defendant has not examined any one of the panchayatdars, who, according to him, participated in the divorce proceedings. Thus, the trial court was perfectly correct in recording the finding that the a lleged divorce was not proved.

8. Added further, the plaintiff has categorically deposed that the defendant married one Veerammal as the second wife and has been living with her, and apart from that the plaintiff was put in cruel treatment. There is no circumstance brought forth isbelieve this part of the evidence of the plaintiff. The first appellate court, without appreciation of the evidence available and only on an extraneous and irrelevant consideration, has refused the relief of maintenance, but the trial court, on the ev idence available,

has recorded a finding that the plaintiff was entitled for maintenance and rightly too.

9. Taking into consideration the facts and circumstances of the case, the trial court has given maintenance at the rate of Rs.250/- per month for the period of one year, i.e. Rs.3000/- towards past maintenance and subsequently Rs.250/- per month for ure maintenance. This Court is unable to notice any reason why the judgment of the trial court should be disturbed. This Second appeal has got to be allowed.

10. In the result, the judgment of the first appellate court is set aside. The judgment of the trial court is restored. This second appeal is allowed, leaving the parties to bear their costs.

Index : Yes
Internet : Yes

vvk

To
1. The Subordinate Judge,
Srivilliputtur
2. The Additional District Munsif,
Sriviliputtur.
3. The Record Keeper, VR Section,
High Court, Madras